

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS	)	
COMMISSION'S TRIENNIAL REVIEW ORDER	)	CASE NO.
REGARDING UNBUNDLING REQUIREMENTS	)	2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS	)	

**MOTION OF BELL SOUTH TELECOMMUNICATIONS, INC.**  
**REGARDING DISCOVERY PROCEDURES**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, moves the Commission to require responses from all persons with relevant information.

This Commission's initial procedural order, issued October 2, 2003, established this case and gave notice of the proceeding to all incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs"), all wireless providers, the Attorney General of the Commonwealth of Kentucky, and the Kentucky Cable Telecommunications Association.

By Motion of October 10, 2003, BellSouth requested that the Commission modify the procedural schedule to consider some of the scheduling and procedural issues which were being proposed by BellSouth and a CLEC coalition, Competitive Carriers of the South ("CompSouth")<sup>1</sup>. BellSouth also noted that all telecommunications carriers, including interexchange carriers that operate in Kentucky under a Certificate of Authority

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<sup>1</sup> CompSouth members include: ITC DeltaCom; MCI; Business Telecom Inc.; NewSouth Communications Corp.; AT&T; Nuvox Communications Inc.; Access Integrated Networks, Inc.; Birch Telecom; Talk America; Cinergy Communications Company; Z-Tel Communications; Network Telephone Corp.; Momentum Business Solutions; Covad; KMC Telecom; IDS Telecom and Xspedius Corp.

from the Kentucky Commission, potentially had information relevant to this proceeding. Pursuant to the Commission's October 2, 2003, Order, the Commission required the persons served with that Order to advise if they wish to become parties to the case by filing written notice of intervention. The Order also provided for initial data requests to be served to incumbent local exchange carriers by October 10, 2003.

An Informal Conference was held on October 14, 2003, pursuant to this Commission's Order. Also, pursuant to the Commission's October 2, 2003, Order, BellSouth and Kentucky Alltel, Inc. ("Alltel") filed petitions seeking to overcome the national presumption that impairment exists in the markets addressed in this proceeding.

As this Commission noted, the Federal Communications Commission ("FCC") released the Triennial Review of Section 251 on Unbundling Obligations of Incumbent Local Exchange Carriers ("Triennial Review Order") and delegated to this and other state commissions the determination as to certain switching, loop and transport "triggers," which, if met, compel a finding of "no impairment" in the relevant geographic areas. It is essential for this Commission to have accurate and complete information in order to make the determinations which are delegated to it by the FCC. For example, in order to make one of these determinations, the existence of "triggers" for switching, this Commission must determine whether there are three facilities-based CLECs in a geographic market providing qualifying service to mass market customers. Information with regard to whether CLECs have switches, the services CLECs are providing, the customers that are being served by these switches, and where those customers are located, is in the possession of those providers and is crucial to this proceeding. Because a number of providers of telecommunications services, including local

governments and other utilities such as power companies, as well as CLECs and IXC's, may have relevant information necessary for the Commission to carry out the duties delegated to it by the FCC, these entities must be required to provide relevant data to this Commission.<sup>2</sup>

In this Commission's November 4, 2003, Order, the Commission served its order on interexchange carriers because of trunking issues relevant to the proceeding. However, as with the October 2, 2003, Order, persons served with the Commission's November 4, 2003, Order were requested to advise the Commission if they wish to intervene in this proceeding. Even though interexchange carriers, CLECs, local governments and other parties who possess relevant information may not wish to intervene for all purposes in this proceeding, it is absolutely essential that they be required to respond to discovery if a state Commission is to accomplish the tasks with which it is charged. See, October 24, 2003 Order of the Georgia Public Service Commission making all telecommunications carriers that have a certificate of authority in Georgia parties for purposes of discovery, Exhibit 1;<sup>3</sup> Mississippi Public Service Commission September 29, 2003 Order that requires telecommunications carriers, even those not actively participating in the docket, to provide relevant data, Exhibit 2;<sup>4</sup> and North Carolina Order also finding any telecommunications carrier, whether actively

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<sup>2</sup> BellSouth's request for information for a short list of date-intensive questions to be sent to a large universe of companies in order for state Commission's to have necessary information is consistent with the discussions at the Triennial Review Implementation Process Task Force on October 10, 2003. A copy of the minutes taken by the Regulatory Source Associates, LLC is attached to BellSouth's October 24, 2003 letter in this docket.

<sup>3</sup> Order, In Re: FCC's Triennial Review Order Regarding the Impairment for High Capacity Enterprise and Dedicated Transport Loops, Docket No. 17741-U; In Re: FCC's Triennial Review Order Regarding Impairment of Local Switching For Mass Market Customers, Docket No. 17749-U, (GA P.S.C. Oct. 24, 2003), 5.

<sup>4</sup> Order, In Re: Generic Proceeding to Review the Federal Communications Commission Triennial Review Order, Docket No. 2003-AD-714, (MS P.S.C. Sept. 29, 2003), 3.

participating in the docket or not, may be required to provide relevant information, Exhibit 3.<sup>5</sup>

It is imperative to obtain full data from all persons who may have relevant data, as illustrated by several examples. For instance, AT&T Broadband Phone of Kentucky, a Comcast company, through an arrangement with Insight Communications, provides telephony services in Kentucky as AT&T Digital. This service is provided through a network which is composed entirely of facilities not provisioned from BellSouth. See, November 5, 2003 *Courier-Journal* article, Exhibit 4. Thus, Comcast appears to be utilizing switching to provision qualifying services to mass market customers. This is one of the key triggers this Commission is required to determine in this proceeding. However, by letter dated October 28, 2003, John J. Sullivan, Vice President and Chief Counsel-Telephony for Comcast Cable Communications, Inc. sent BellSouth's undersigned counsel a letter advising that although Comcast was in receipt of BellSouth's first set of interrogatories and first request for production of documents to AT&T Broadband Phone of Kentucky, a Comcast company, Comcast takes the position that because it is not a party to the proceeding and, even if it were, there is no requirement for it to answer BellSouth's discovery. See, Exhibit 5. If Comcast is allowed to refuse to provide this information to the Commission because Comcast has chosen not to be a participant and not to respond to BellSouth's discovery, this Commission's determination will be based on inadequate and incomplete data and BellSouth will be deprived of due process.

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<sup>5</sup> Order, In the Matter of Triennial Review Order – DS1 Enterprise Customer Impairment, Docket No. P-100, Sub 133p., and In the Matter of Triennial Review Order – Main Proceeding, Docket No. P-100, Sub 133q, (NC U.C. Sept. 11, 2003), 2.

Similarly, numerous other entities or their affiliates, many of whom may choose not to intervene in this proceeding are likely to have relevant information which BellSouth's discovery requests are seeking to obtain so that this Commission will have an accurate and complete record. For example, Independent Telephone Group ("ITG")<sup>6</sup> has sought dismissal from this case. However, a number of the members of ITG, or their affiliates, currently are providing CLEC services. BellSouth believes that the following companies, or their affiliates, may have facilities relevant to this docket. Some of these companies or their affiliates thought to be providing CLEC services include Brandenburg Telephone Company, Inc., or Brandenburg Telecom, LLC, and South Central Telecom, LLC. East Kentucky Network, LLC d/b/a Appalachian Wireless also could be providing CLEC services. In addition, other examples of companies which provide some CLEC services through either loop transport and/or switching functionalities include municipals such as the Frankfort Electric and Water Plant Board, Murray Electric System in cooperation with e-Tel, LLC, Owensboro Municipal Utilities, Bowling Green Municipal Utility, and Hopkinsville Electric System. See, <http://www.pff.org/publications/10.17municipaltelecom.pdf> at 20-21, Table of Municipals and Services.

It is essential that this Commission require all of the entities with the necessary data provide that data to the Commission. It also is essential that these entities be required by the Commission to comply with BellSouth's data requests. BellSouth

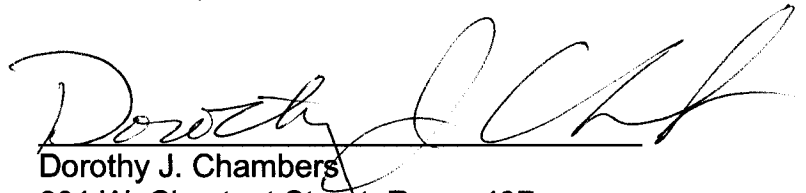
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<sup>6</sup> Members of ITG include: Ballard Rural Telephone Cooperative Corporation, Inc.; Brandenburg Telephone Company, Inc., Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative Corporation, Inc., Coalfields Telephone Company, Inc., Highland Telephone Cooperative, Inc., Logan Telephone Cooperative, Inc., Mountain Telephone Cooperative, Inc., North Central Telephone Cooperative, Inc., Peoples Rural Telephone Cooperative, South Central Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and West Kentucky Rural Telephone Cooperative.

remains willing to work with these entities to try to make discovery expeditious, cost effective, and also to minimize any inconvenience to the extent possible. However, those entities which possess relevant information must be required to provide it to the Commission in order for this Commission to carry out its functions in this proceeding and make a determination based on a record which has been appropriately developed. Basic due process also requires that BellSouth be permitted access to this information in this proceeding.

Accordingly, BellSouth respectfully requests the Commission order all persons and entities with relevant data provide that information to the Commission and respond to all relevant data requests, including those submitted by BellSouth in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dorothy J. Chambers", is written over a horizontal line.

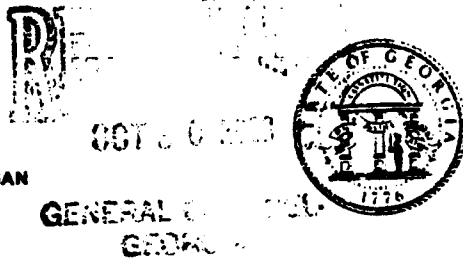
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ANGELA E. SPEIR  
STAN WISE



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OCT 27 2003

**EXECUTIVE SECRETARY  
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**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF GEORGIA**

**DOCKET#** 17741  
17749  
**DOCUMENT#** 67841  
67842

In Re:

FCC's Triennial Review Order Regarding )  
the Impairment for High Capacity )  
Enterprise and Dedicated Transport Loops )

Docket No. 17741-U

In Re:

FCC's Triennial Review Order Regarding )  
the Impairment of Local Switching for )  
Mass Market Customers )

Docket No. 17749-U

**ORDER ESTABLISHING PROCEDURE**

The Commission enters the following Initial Pre-Hearing Order governing procedures in the above-styled Docket for (1) service of all pleadings, discovery and responses, testimony, briefs and other required filings; (2) discovery, including but not limited to, interrogatories, requests for production of documents, requests for admissions, depositions; and (3) confidential treatment of responses to discovery. Any issue regarding these matters that are not addressed in this Initial Pre-Hearing order will be governed by the Commission's normal rules of practice and procedure.

**(1) Service of Pleadings, Discovery and Responses, Testimony, Briefs and Other Required Filings.**

All filings by the Parties to this proceeding and the service of said filings by Parties shall be made as follows:

- (i) All filings required to be made to the Commission shall be made pursuant to the ordinary rules of practice and procedure that apply to matters pending before the Commission, on the dates specified by the Commission and in the manner such filings are ordinarily made; provided, however, that unless the Commission specifically orders otherwise with regard to a particular filing or submission, the

**EXHIBIT**

1

parties may hand deliver any required pleading to the Commission by 11 a.m. on the day following the date the filing was due, and provided that service on the other parties was made in accord with the requirements of this order, such filing shall be considered timely.

- (ii) Every party to this proceeding shall provide every other party with an email address of a person who shall be authorized to receive service copies for that party of all filings that have to be filed at the Commission or otherwise served on the parties. If the person authorized to receive service for any party changes, that party shall be responsible for notifying all other parties of such change.
- (iii) For the purpose of this proceeding, where a responsive submission is made, service shall be deemed complete when the person making the filing sends the filing to the appropriate email address. For filings that require a responsive filing from other parties, such as interrogatories, requests for admission and requests for production of documents, the time for complying with the request shall begin when the party to whom the request is made receives the request provided that that if the filing is served electronically and is received on the next business day following the date on which the electronic filing was received. The parties are admonished to (1) request "receipt" and "read" indicators for all emails to ensure that they are delivered and received in a timely manner and (2) to ensure that the person designated to receive service, or someone acting in his or her stead, can regularly access email. Upon agreement of the parties, each party may designate up to three persons to receive service to alleviate any concerns about the availability of someone to receive service.
- (iv) Because some filings, such as testimony, or the responses to filings such as interrogatories or responses to requests for production may be voluminous, the parties can elect, for non-confidential materials, to create a publicly accessible website where any such filing can be posted. If a party elects to post a responsive filing to this web site, and sends an email with a URL link to that publicly accessible website to the appropriate representatives of the other parties, such a posting shall be considered service of the responsive document. This vehicle may be used for the posting of testimony and responses to discovery, but shall not be used for the filing of matters that require a response from other parties, such as interrogatories, requests for admission or requests for the production of documents.
- (v) The purpose of providing for service in the foregoing ways is to facilitate the exchange of information between the parties so that this proceeding can go forward in a timely and efficient manner. Any disputes as to whether there has been compliance with these requirements should be discussed among the parties and resolved amicably if at all possible. Prior to bringing any dispute regarding these matters to the Commission, the parties will be required to certify that they have met and discussed the dispute, and succinctly detail exactly what the dispute is. The Commission will not entertain disputes involving a question of whether a



filing was made timely unless the aggrieved party can demonstrate that it has been substantially prejudiced.

- (vi) Where a party receives an electronic copy of a document, the party can request a paper copy of the document, but the responding party shall have one week after the request is made to furnish the paper copy.

## **(2) Discovery**

### **(A) Interrogatories, Requests to Produce Documents, Requests for Admissions.**

(i) Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may be served requesting state-specific responses and information or, at a party's discretion, seeking responses and information concerning all nine states in the BellSouth region. It shall not be an appropriate or sustainable objection that such discovery seeks information concerning states other than the state in which the discovery is served. Subject to the Confidentiality provisions in Section 3 of this Order and any other evidentiary objections, discovery obtained in other states in the BellSouth region shall be available for use in this proceeding or where appropriate, in appeals from Commission orders to a court of competent jurisdiction or the FCC, subject to normal rules applying to the admission of evidence.

(ii) Where requested, the parties shall respond, except as provided below to Interrogatories, Requests to Produce and Requests for Admissions within 21 calendar days of service.

(iii) If a party believes that a particular request is unduly voluminous or would otherwise require additional time to respond to (and the request is not otherwise objectionable) the parties are admonished to work together to agree on an appropriate time frame for responding to the discovery, given the circumstances that exist at the time. In resolving such issues, the parties are directed to consider whether the requests can be broken into smaller groups, with some groups being responded to more quickly than others, or whether there is some other innovative way to address such issues, without bringing them to the Commission for resolution. Again, should a party seek the Commission's intervention in such a dispute, the complaining party should be prepared to explain in detail why it has been unable to reach a satisfactory resolution, and why it is prejudiced by the solution offered by the non-complaining party.

(iv) Objections to Discovery.

- (a) Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery shall be made within 10 calendar days after service. Objections to Interrogatories, Requests to

**Produce Documents and Requests for Admissions and other Discovery may include, but not be limited to:**

**(1) Legal Objections**

**(2) Objections to the time required for the production of region-wide discovery responses, in which event the objecting party shall provide a time frame and/or date certain for response to the region-wide discovery. Such Objections may include the fact that certain discovery responses may be voluminous and/or require answers from individuals from multiple states.**

**(b) Where objections are made pursuant to (2)(A)(iv) (a) (1), the objecting party shall state whether it intends to provide a partial response subject to the objection. Parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.**

**(c) Where objections are made pursuant to (2)(A)(iv) (a) (2), the parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.**

**(v) Where the parties are unable to resolve a discovery dispute as outlined in the preceding sections, the parties shall seek expedited rulings on any discovery dispute, and the Commission shall resolve any such dispute expeditiously. The resolution of discovery disputes may be determined by the Commission, by a Pre-Hearing Officer, or by an attorney representing the Commission appointed for that purpose on an ad hoc basis.**

**(B) Depositions**

**(i) Depositions of employees, consultants, contractors and agents may be taken pursuant to the ordinary rules of practice and procedure before the Commission, including any objections that may be raised.**

**(ii) Depositions of persons whom the parties will sponsor as witnesses in the above-styled Docket shall be limited as follows, after testimony is filed:**

**(a) Any party may depose a person who files testimony, subject to (2)(B)(ii)(b) below, after the filing of:**

**(1) direct testimony; and**

**(2) rebuttal testimony; and**

**(3) surrebuttal testimony**

- (b) Once a witness has been deposed regarding such testimony in any state in the BellSouth region, that witness may only be deposed again (1) upon the request of the staff of the Commission, or if there is participation by a public agency such as a consumer advocate or the Attorney General, upon request by such public agency, or (2) any party to this proceeding that was not a party to the proceeding in which the deposition was taken, or (3) by any party, if the testimony offered by the witness contains state specific information which is different from previous testimony filed by the witness, in which case the deposition will be limited to questions about the state specific material and related items.
- (c) Should a witnesses' testimony in this state change materially, other than by reason of the inclusion of state specific material discussed in (b) above, the witness may be deposed again, but only in connection with the testimony that has changed.
- (d) The purpose of these deposition requirements is to conserve the resources of the parties, and to encourage the parties to work jointly and cooperatively to conduct necessary discovery.
- (e) If the parties have a dispute regarding the taking of depositions in any particular situation, the parties are admonished to work together to resolve such differences, and if those differences cannot be reconciled, the parties should be prepared to present a very brief explanation of the dispute and the aggrieved party should be prepared to demonstrate how it is prejudiced by its failure to comply with the requests or objections of the opposing party.

### **(3) Confidentiality of Information**

To facilitate the flow of discovery material, the parties may require the execution of a protective agreement where appropriate to protect trade secret information. A form protective agreement is attached to this Order.

### **Ordering Paragraphs**


**WHEREFORE IT IS ORDERED**, that the parties to this docket shall comply with the discovery procedures set forth above.

**ORDERED FURTHER**, that for the purpose of discovery, all telecommunications carriers that have a certificate of authority in Georgia are parties to these proceedings.

**ORDERED FURTHER**, that a motion for reconsideration, rehearing, or oral argument shall not stay the effectiveness of this order unless expressly ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

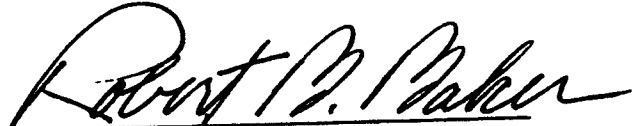
The above by action of the Commission in Administrative Session on the 21st day of October, 2003.



Reece McAlister  
Executive Secretary

10-24-03

Date



Robert B. Baker, Jr.  
Chairman

Oct. 24, 2003

Date

**BEFORE THE  
MISSISSIPPI PUBLIC SERVICE COMMISSION**

In re: )

Generic Proceeding to Review the Federal )  
Communications Commission's Triennial )  
Review Order )  
\_\_\_\_\_ )

Docket No. 2003-AD-714

**ORDER ESTABLISHING DOCKET, PROCEDURE AND SCHEDULE**

COMES NOW, the Mississippi Public Service Commission ("Commission"), *sua sponte*, and opens the above-referenced generic proceeding to review the Federal Communications Commission's ("FCC") Triennial Review Order, released on August 21, 2003, regarding the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers<sup>1</sup> ("Triennial Review Order"). The Triennial Review Order was published in the *Federal Register* on September 2, 2003 and, thus will become effective on October 2, 2003, unless otherwise stayed.

The FCC's Triennial Review Order encompasses a number of issues which this Commission and other state regulatory bodies must address. The issue which must first be addressed by the Commission relates to whether local circuit switching for enterprise customers should continue to be provided on an unbundled basis. More specifically, the FCC has established a national presumption that competitors of Incumbent Local Exchange Carriers ("ILECs") will not be impaired without access to unbundled local circuit switching

<sup>1</sup> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003.



for enterprise customers.<sup>2</sup> The FCC established, however, that the aforementioned national presumption can be overcome through a “geographic specific analysis” demonstrating that competitive carriers are indeed impaired without access to ILEC local circuit switching.<sup>3</sup>

With respect to overcoming the national presumption discussed above, the FCC concluded that state commissions are uniquely positioned to evaluate local market conditions and to determine whether enterprise customers should be granted access to unbundled ILEC circuit switching.<sup>4</sup> In particular, the FCC noted that it would permit state commissions to rebut the national presumption of no impairment without ILEC local circuit switching by undertaking a more granular analysis utilizing the economic and operational criteria established by the FCC in the Triennial Review Order. In order to support a petition for a waiver of the national finding of no impairment, the FCC concluded that state commissions must make an affirmative finding of impairment showing that carriers providing service at the DS1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market.<sup>5</sup> The FCC established that state commissions have ninety (90) days from the effective date of its Triennial Review Order to petition the FCC to waive the finding of no impairment.

Given the October 2, 2003 effective date of the Triennial Review Order and the expedited schedule which must be adhered to for overcoming the national presumption of no impairment with respect to local circuit switching, the Commission herein establishes this Docket for purposes of fulfilling the Commission’s responsibilities under the FCC’s Triennial

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<sup>2</sup> *Id.* at ¶451.

<sup>3</sup> *Id.* at ¶454.

<sup>4</sup> *Id.* at ¶455.

<sup>5</sup> *Id.*

Review Order. The Commission will conduct this docket in two separate phases in order to fulfill all of its responsibilities with respect to the FCC's Triennial Review Order. The first phase of this docket will be to consider the impairment of DS1 enterprise customers within the ninety (90)-day time frame set out by the FCC, and the second phase will be to consider the balance of the matters that will need to be addressed by the Commission pursuant to the Triennial Review Order within the nine (9)-month time frame set out by the FCC. The ninety (90)-day time frame will expire on or about Tuesday, December 30, 2003, while the nine (9)-month time frame will expire on or about Friday, July 2, 2004. Parties may intervene in this docket pursuant to the Commission's rules governing intervention. Any telecommunications carrier regulated by this Commission may be called upon to provide relevant information to these dockets, and the Commission may, at its discretion, require a party that is not actively participating in this docket to actively participate herein. A procedural schedule for conducting phase one of this proceeding is set forth in this Order establishing this docket. The Commission will issue another order at a later date establishing a procedural schedule that will address phase two of this docket.

The Commission has determined through preliminary investigation conducted by the Mississippi Public Utilities Staff ("MPUS") that the number of unbundled network element ("UNE") combinations consisting of a DS1 loop and above with unbundled local circuit switching in Mississippi is *de minimis*. Accordingly, we are hereby adopting the recommendation of the MPUS that specific proceedings in phase one of this docket should not be undertaken absent a specific request from an affected party seeking to rebut the national presumption established by the FCC with regard to local circuit switching.

Based upon the foregoing, we find that any party seeking to have the Commission undertake proceedings aimed at rebutting the FCC's no impairment finding regarding local circuit switching for enterprise customers should submit a petition requesting such action by the Commission no later than October 14, 2003.<sup>6</sup> Any party petitioning for such action by the Commission should identify the particular geographic area(s) for which it is requesting that the Commission to rebut the national finding and should also be prepared to actively participate in any proceedings initiated, including the presentation of "actual marketplace evidence," sworn expert testimony, and comments in support thereof.<sup>7</sup> Parties opposing any such petition(s) should submit their responses, supporting evidence and comments no later than October 24, 2003. Any evidence and comments to be filed in rebuttal by a petitioning party must be filed no later than October 31, 2003. Proposed orders from all parties must be submitted no later than November 20, 2003.

IT IS, THEREFORE, ORDERED that this Docket is hereby established for purposes of fulfilling the Commission's responsibilities under the FCC's Triennial Review Order and the Commission hereby adopts the schedule set forth above in connection with phase one of this docket which concerns issues related to the FCC's finding that competitors of ILECs are not impaired without access to unbundled local circuit switching for enterprise customers. The Commission will establish a procedural schedule for conducting phase two of this docket through a subsequent order.

This Order shall be effective as of the date hereof.

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<sup>6</sup> As indicated in the Triennial Review Order, this does not preclude a party from filing such a petition at a later time. Such petition, however, will not be considered as part of this 90-day proceeding. Instead, such petition will be considered within the six-month deadline required by the Triennial Review Order. (See footnote 1398 of the Triennial Review Order)

<sup>7</sup> Triennial Review Order at ¶93.



Chairman Michael Callahan voted ay; Vice-Chairman Bo Robinson voted Agg;  
Commissioner Nielsen Cochran voted Agg.

SO ORDERED on this the 29th day of September, 2003.

MISSISSIPPI PUBLIC SERVICE COMMISSION



Michael Callahan  
MICHAEL CALLAHAN, CHAIRMAN

Bo Robinson  
BO ROBINSON, VICE CHAIRMAN

Nielsen Cochran  
NIELSEN COCHRAN, COMMISSIONER

ATTEST: A TRUE COPY

Brian U. Ray  
BRIAN U. RAY  
Executive Secretary

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-100, SUB 133p  
DOCKET NO. P-100, SUB 133q

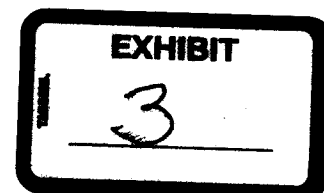
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-100, Sub 133p	)	
	)	
In the Matter of	)	
Triennial Review Order—DS1	)	
Enterprise Customer Impairment	)	ORDER ESTABLISHING DOCKETS
	)	AND PRESCRIBING PROCEDURE
Docket No. P-100, Sub 133q	)	FOR DOCKET NO. P-100, SUB 133p
	)	
In the Matter of	)	
Triennial Review Order—Main	)	
Proceeding	)	

BY THE CHAIR: On August 21, 2003, the Federal Communications Commission (FCC) issued its long-awaited *Triennial Review Order (TRO)*. With respect to enterprise customers, the FCC found the following:

The evidence in our record establishes that, in most areas, competitive LECs [local exchange companies] can overcome barriers to serving enterprise customers economically using their own switching facilities in combination with unbundled loops (or loop facilities)....Accordingly, we make a national finding that competitors are not impaired without unbundled access to incumbent LEC local circuit switching when serving DS1 enterprise customers. We recognize, however, that special circumstances may create impairment without access to unbundled local circuit switching to serve enterprise customers in particular markets. We thus allow states 90 days to petition the Commission to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers. (*TRO*, Para. 421)

The criteria by which impairment is to be demonstrated are set out generally in *TRO*, Paras. 455-458. The criteria for defining the relevant markets are set out generally in *TRO*, Paras. 495-497.



After careful consideration, the Chair concludes the following:

1. That two dockets should be established—namely, Docket No. P-100, Sub 133p, to consider the impairment of DS1 enterprise customers within the 90-day time frame set out by the FCC, and Docket No. P-100, Sub 133q, to consider the balance of matters to be addressed by this Commission pursuant to the *TRO* within the 9-month time frame set out by the FCC.<sup>1</sup> The 90-day time frame will expire on or about Tuesday, December 30, 2003, while the 9-month time frame will expire on or about Friday, July 2, 2004. All incumbent local exchange companies and competing local providers will be considered parties to these dockets. Intervention may be sought according to Commission rules. Parties that desire to participate actively in these dockets should so notify the Commission by fax at (919) 733-7300 by no later than Thursday, September 25, 2003. All others will be considered not to be actively participating in these dockets and need not be served by parties who are actively participating. Nevertheless, any telecommunications carrier regulated by this Commission may be called upon to provide relevant information to these dockets, and the Commission may, at its discretion, require a party that is not actively participating in these dockets to actively participate in them. This Procedural Order, aside from establishing the two dockets and regulating participation, concerns Docket No. P-100, Sub 133p. A later procedural order will address Docket No. P-100, Sub 133q.

2. That BellSouth Telecommunications, Inc. (BellSouth), Verizon South, Inc. (Verizon) and Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Sprint) are directed to provide to the Commission by no later than Friday, September 19, 2003, a statement of how many unbundled network element (UNE) combinations consisting of a DS1 loop with unbundled local switching they are currently providing in North Carolina. The Chair believes that it is a reasonable conclusion that, if there are relatively few of this type of UNE combinations being ordered, it is highly unlikely that a showing of impairment can be sustained. If the Commission finds that the provision of such loop combinations is either non-existent or *de minimis*, then the Commission will conclude that there is no impairment; provided, however, that a competing local provider (CLP) whose substantial interests are affected by this action may file a Petition as set out below. In the absence of a timely filing of such Petition(s), then the Commission's finding that there is no impairment will become final and effective, and no further investigation in Docket No. P-100, Sub 133p will be undertaken.

3. That any CLP with substantial interests in this matter desiring to contest the presumption of non-impairment with respect to DS1 enterprise customers must file a Petition to do so and shall bear the burden of proof. Any such Petitions shall contain all the proof that is necessary to rebut the FCC's presumption of non-impairment.

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<sup>1</sup> The Commission will not utilize the Docket No. P-100, Sub 133o because of the similarity of the upper-case "o" to zero and the potential for confusion.

4. That, due to the shortness of time in which the Commission has to accomplish this review, this proceeding shall be conducted on the pleadings by way of Petition, Comments, and Reply Comments. The Petition, Comments, and Reply Comments shall be considered evidence and, to that end, all such pleadings shall be verified as to their veracity. There shall be no extensions of time granted except under the most exigent circumstances.

5. That the parties shall submit proposed orders and/or briefs after the Petition/Comment/Reply Comment cycle together with a matrix summary keyed to the criteria set out in the *TRO* for decision on this matter. The *TRO* is a document of great length and complexity. It is, therefore, of the utmost importance both for the parties themselves and for the Commission that, at all stages of the pleadings, the parties should present their arguments concisely and structure their pleadings according to the decisional criteria set out in the *TRO*, so as to be able to prove or refute the necessary elements therein. The parties are encouraged to confer with a view toward arriving at a common format.

6. That the schedule for Petitions, Comments, and Reply Comments shall be as follows:

- a. Petitions from CLPs to rebut the presumption of non-impairment, by no later than Friday, October 3, 2003.
- b. Comments from those opposing the Petitions, by no later than Monday, October 13, 2003.
- c. Reply Comments from Petitioners and Intervenor supporters of the Petitions by no later than Monday, October 20, 2003.
- d. Proposed Orders and/or Briefs and matrix summaries from all parties, no later than Monday, November 10, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of September, 2003.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk

dl091003.01

Wednesday, November 5, 2003

Business Calendar  
 Business People

F2  
 F6

Editor: Dan Blake  
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# AT&T begins offering local phone service in Kentucky

**BellSouth area targeted as part of 3-state push**

By **BILL WOLFE**  
 bwolfe@courier-journal.com  
 The Courier-Journal

AT&T, a familiar name in long-distance, continued its push into local phone service yesterday, launching in the BellSouth territory of Kentucky, as well as in Arkansas and Mississippi. Now selling dial tones to 3.5 million households in 20 states, AT&T plans to

operate in 35 states by the end of the year.

AT&T, which resells service from BellSouth, will operate only in parts of Kentucky served by the Bell company, said Kevin Crull, senior vice president of AT&T Consumer.

BellSouth regional director Ellen Jones said yesterday that AT&T is "just one more company entering the already competitive market," and noted that BellSouth already faced local-service competition from another big name in long-distance, MCI.

"They do have name recognition" at AT&T, Jones said, but BellSouth competes favorably on

pricing and product bundling, she said. There are more than 50 phone companies operating in Louisville, 40 or more in mid-sized cities such as Paducah, Owensboro and Bowling Green, and at least six in the smaller markets, she said.

Plans available from AT&T include basic service for \$16.95, not counting taxes and other special fees — \$1.45 a month less than BellSouth charges in Louisville, but more than basic service costs in Kentucky's rural areas and small cities. Local service plus a choice of three features, such as call-waiting, call-forwarding or call return, costs \$29.95 a month.

For \$59.95, customers also get a larger selection of calling features and unlimited long-distance calling.

BellSouth sells its Complete Choice package, which includes 20 features, for \$33.50. For \$59.88, customers get Complete Choice plus unlimited long-distance calling.

Insight Communications, which offers telephone service over its fiber-optic network, charges \$13 a month for a customer's first phone line, and \$10 a piece for additional lines. It sells a bundle of two features for \$9, or 12 features for \$14. Lightyear Communications, a Louisville-

based company that is working its way out of bankruptcy, offers an unlimited local and U.S. long-distance plan for \$49.99 per month.

MCI, another reseller, markets its Neighborhood plan with local service, five features and unlimited long-distance in Kentucky for \$55.99 a month. Sprint plans to roll out local service across the nation, but has not announced a timetable.

Both AT&T and BellSouth say it's essential to offer one-stop shopping for all types of telephone service.

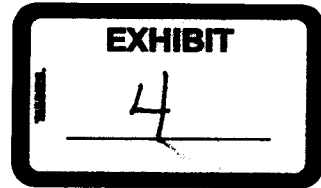
"It's not a good business plan to try to stay only in long-distance," said AT&T spokeswoman

Michelle Hitt. "To be competitive in this environment, you have to be in the local market, as well."

"That, I think, more than anything else is what is pushing the marketplace," Jones said.

"Customers are wanting bundles. They want to call one company, buy everything they want and receive one phone bill," she said.

BellSouth also offers plans that include cell-phone service from Cingular Wireless, a joint venture between SBC Communications and BellSouth. Crull said AT&T is running a trial bundling plan with AT&T wireless in Tampa, Fla., and San Diego, Calif.





Tuesday, October 28, 2003

RECEIVED

Comcast Cable Communications, Inc.  
1500 Market Street  
Philadelphia, PA 19102

**VIA OVERNIGHT MAIL**

OCT 29 2003

Dorothy J. Chambers  
BellSouth  
601 W. Chestnut St., Room 407  
Louisville, KY 40203

LEGAL DEPT. (KY.)

**RE: First Set of Interrogatories and First Request for Production of Documents**

Dear Ms. Chambers:

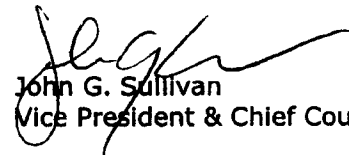
We are in receipt of BellSouth Telecommunications, Inc.'s ("BellSouth") First Set of Interrogatories and First Request for Production of Documents to AT&T Broadband Phone of Kentucky, a Comcast company, ("Comcast") served in Kentucky Public Service Commission Case No. 2003-00379 on October 10, 2003.

As you know, Comcast is not a party to the proceeding captioned in BellSouth's discovery to Comcast. Based on the fact that Comcast is not a party to the proceeding, we do not believe that there is any binding authority for the issuance of discovery to Comcast. Conversely, we do not believe that there is any binding authority requiring Comcast to respond to BellSouth's discovery requests.

Additionally, I note that the Order issued by the Kentucky Public Service Commission on October 2, 2003, specifically contemplates the issuance of initial data requests to the incumbent local exchange carriers ("ILECs"), but does not include any such provision for the issuance of discovery served by ILECs to the competitive local exchange carriers ("CLECs"). Accordingly, even if Comcast were a party to the proceeding, which it is not, there would be no authority for the issuance of, or response to, BellSouth's discovery.

Based on the above, Comcast will not formally respond to the discovery issued by BellSouth to Comcast on October 10, 2003 absent a binding Order to do so. By copy of this letter to Thomas M. Dorman, Executive Director, we are notifying the Kentucky Public Service Commission of Comcast's objection to BellSouth's discovery request.

Sincerely,



John G. Sullivan  
Vice President & Chief Counsel - Telephony

CC: Thomas M. Dorman, Kentucky Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615  
Amy Dougherty, Esq., Kentucky Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615  
Trisha Derr, Womble Carlyle, One Wachovia Center, Suite 3300, 301 South College Street, Charlotte, NC 28202-6025  
Ana Bataille, Comcast  
David Sered, Comcast

